

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, ET AL,

Plaintiffs,

v.

RICK PERRY, ET AL.

Defendant.

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Civ. No. SA-11-CV-360-OLG-JES-XR

ORDER

Defendants the State of Texas and Secretary of State Nandita Berry have filed a “Motion for Reconsideration by the Three-Judge Court” of the three-judge order of May 6, 2014, granting in part the “United States’ Motion To Compel the Production of Legislative Documents.” The motion for reconsideration raises legitimate and complex issues that do not need to be addressed in order for this Court to resolve the current discovery dispute. The Court, however, concludes, after due consideration, that the motion should be and is hereby denied.

The order complained of employs the “practical ability” test, though the viability of that concept is subject to future refinement by the Fifth Circuit and other courts. The application of that test in this Voting Rights Act litigation should not be, and is not, determinative of precisely what entities and persons are parties or of what precisely constitutes the “State of Texas”

in this case or others. The order is but a practical recognition of what discovery may be conducted, in this matter, under Rule 34 instead of Rule 45, before the rapidly advancing discovery deadline. Nothing in the order authorizes the United States to obtain, via Rule 34, documents from the Texas Legislative Council not admitted to be in the possession, custody or control of the Office of the Attorney General or from legislators not represented by the Office of the Attorney General.

Except to the extent that the order is clarified herein, the motion for reconsideration is DENIED.

SIGNED this 20th day of May, 2014 on behalf of the Three-Judge Panel.

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ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE